

123 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Mid-America Pipeline Company, LLC

Docket No. IS08-182-000

ORDER ACCEPTING AND SUSPENDING TARIFF,
SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING
A HEARING AND SETTLEMENT PROCEDURES

(Issued April 25, 2008)

1. On March 31, 2008, Mid-America Pipeline Company, LLC (MAPL) submitted a tariff filing with a cost-of-service justification that proposes to cancel a joint rate and establish a local rate for the transportation of liquefied petroleum products on its pipeline system.¹ Mid-America proposes an April 1, 2008, effective date and requests waiver of the 30-day notice requirement of section 6(3) of the Interstate Commerce Act under 18 C.F.R. § 341.14 (2007). P.M.I. Trading Limited (PMI) protested the tariff filing. As detailed below, the Commission accepts and suspends Mid-America's FERC Tariff Nos. 55 and 56 to become effective April 1, 2008, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

MAPL's Filing

2. MAPL proposes to cancel a joint movement with Rio Grande Pipeline Company (Rio Grande), a former affiliate, and establish new local and incentive tariff rates in proposed FERC Tariff Nos. 55 and 56, which cancels FERC Tariff No. 52 and FERC Tariff No. 54 respectively. MAPL proposes to establish a new local rate, based on a cost-of-service showing, for the entire length of its system to replace its portion of the canceled joint rate. MAPL states that FERC Tariff Nos. 55 and 56 comply with the requirements of 18 C.F.R. § 342.4(a), Cost-of-Service Rates, and 18 C.F.R. Part 346, Oil

¹ MAPL's proposed tariffs cover the movement of propane/butane mixtures originating at Hobbs-Holding, TX that terminate at the Lawson's Junction, TX interconnect with Rio Grande.

Pipeline Cost-of-Service Filing Requirements. MAPL submitted cost, revenue, and throughput data supporting a new general rate of \$.6518 cents per barrel and an incentive rate of \$.4739 cents per barrel.²

3. MAPL requests waiver of the Commission's 30-day notice requirement of section 6(3) because the volume commitment contract that was the basis for the previously filed incentive rate expired and it rescinded the joint rate concurrence effective March 31, 2008.

Intervention and Protest

4. PMI submitted its motion for permission to file an intervention and protest 7 days out of time on April 22, 2008. PMI states it delayed its filing because of administrative and logistical difficulties in obtaining, and coordinating the internal review of both Rio Grande's and MAPL's companion filings.³ PMI, a subsidiary of PEMEX, states it manages international sales and purchase transactions involving natural gas liquids, petroleum and petrochemical products, and it supplies and receives these commodities to and from PEMEX and other various customers, suppliers, and markets world-wide. PMI states it is a former transportation contract holder on MAPL's system, and currently purchases LPG on a delivered basis at the U.S.-Mexico border from BP Products North America, Inc. (BP) and Enterprise Products Operating LLC (Enterprise), both of whom are current shippers on Rio Grande and on MAPL. Under the terms of its purchase arrangements for tenders exceeding 14,000 barrels per day, PMI states it must reimburse BP and Enterprise for 100 percent of the upstream pipeline transportation charges. Therefore, PMI states, it is an actual beneficial user of both the MAPL and Rio Grande systems and a true party of economic interest. PMI states its intervention and protest are in the public interest, and acceptance of its protest cannot prejudice any party as the Commission has yet to issue any order on MAPL's filing.

5. As PMI notes in its "Verified Statement of Economic Interest" attached to its protest, MAPL's filing will impact PMI because it is essentially a rate increase for PMI

² PMI states its purchases are sufficiently large to qualify for the lower incentive rate. Thus, PMI "will bear 'only' a \$2.3136/bbl total rate for a movement that today costs \$1.5432/bbl."

³ Rio Grande tendered its filing to establish a new local rate replacing its portion of the canceled joint movement with MAPL in Docket No. IS08-168-000 on March 26, 2008, five days before MAPL's instant filing.

as it is the party which pays the transportation rates under commercial arrangements with current shippers on MAPL that provide for a direct passthrough of 100 percent of MAPL's tariffed rates. Therefore, PMI argues, it has shown it has a substantial economic interest in this proceeding and standing to protest. The Commission concludes that PMI's contractual arrangements with BP and Enterprise establish its standing to protest MAPL's filing. Accordingly, the Commission grants intervention and accepts PMI's protest.

6. PMI states that MAPL (and Rio Grande in Docket No. IS08-168-000) filed to cancel its joint settlement rate and establish a new local transportation rate to disaggregate into two pieces a long-standing joint, volume incentive rate movement that had been performed for approximately 12 years. As specified under the agreement between PMI, Rio Grande and MAPL, the contract term would end the earlier of ten years after first flow or once PMI reached a specified aggregate transportation volume. PMI states it fulfilled its volume obligation in less than ten years, so the agreement technically expired sometime around April 2005, but that it continues today to receive volumes originating at Hobbs, TX from BP and Enterprise. PMI states that as a result of the instant filing and the proposed rate in MAPL's filing, the total proposed rate will increase by approximately 50 percent. PMI opposes the rate increase and requests the Commission suspend the filing's proposed rates, subject to refund, and set the instant docket for hearing.

7. PMI states it cannot discern the proposed cost-of-service rates from the instant filing, and that due to the absence of workpapers, testimony and explanatory material, contends that MAPL has failed to demonstrate a substantial divergence between MAPL's actual costs and the revenues that would result from the application of an index rate and, further, that absent the proposed rate increase, any such index rate would be unjust and unreasonable.

8. PMI states MAPL's filing raises numerous issues of material fact with respect to its claimed actual costs and proposed rate levels, including, but not limited to, the appropriate: (1) return on equity and debt; (2) capital structure; (3) income tax allowance; (4) depreciation rate; (5) operation and maintenance allowance; (6) rate base for the pipeline; (7) throughput levels; (8) cost allocation particularly with respect to discrete facilities associated with the proposed new movement and MAPL's numerous other pipeline movements; and (9) rate design. PMI also notes that MAPL does not disclose whether it used a DCF methodology to calculate its proposed return on equity. If

so, PMI states the Commission must evaluate MAPL's filing to ensure that MAPL is in compliance with the Commission's recent Policy Statement regarding proxy group compensation used in the DCF calculation.⁴

Discussion

9. The Commission finds that MAPL has made an adequate initial showing that its filing meets the requirements of a cost-of-service filing, under 18 C.F.R. § 346.1 of the Commission's regulations based on the cost figures provided in its filing. The Commission grants waiver of the 30-day notice requirement to allow MAPL's proposed tariff to become effective on less than 30 days' notice. The issues in this case pertain to the data and methods that MAPL uses to determine its proposed rate and the resolution of these factual disputes will have a rate impact on shippers using MAPL's pipeline system. However, there is insufficient data at this time to resolve these disputes. Therefore, the Commission will establish hearing procedures to examine all the issues raised by the filing.

10. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case related to the support for MAPL's cost-of-service rate proposal and proposed cancellation of the joint service and therefore the new tariff rates may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter.⁵ To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.⁷

⁴ *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (issued April 17, 2008).

⁵ See 18 C.F.R. § 343.5 (2007).

⁶ 18 C.F.R. § 385.603 (2007).

⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

11. The Commission is troubled in this case by the extremely short notice of its filing provided by MAPL and the lateness of PMI's request to intervene, and the scant justification in both instances. The Commission hereby serves notice that in the future in oil pipeline cases it will look closely at the sufficiency of the justification given for requests to file on short notice and requests to intervene out of time.

Suspension

12. Based upon a review of the filing, the Commission finds that MAPL's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will accept FERC Tariff Nos. 55 and 56 for filing and suspend them, to be effective April 1, 2008, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, MAPL's FERC Tariff Nos. 55 and 56 are accepted for filing and suspended, to become effective April 1, 2008, subject to refund and subject to further order of the Commission.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by MAPL's filing.

(C) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(E) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case

to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.